

LLOYD P. WEBSTER

IBLA 81-981

Decided October 20, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. NM MC 70810 through NM MC 70893.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Lloyd P. Webster, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On September 28, 1979, Lloyd P. Webster filed in the New Mexico State Office, Bureau of Land Management (BLM), copies of the official record of the notices of location for the Sure Nos. 1 through 18, and the Jeannie Nos. 1 through 66 lode mining claims, NM MC 70810 through NM MC 70893, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims had been located in August 1976. No evidence of assessment work was filed with BLM on or before October 22, 1979. A copy of the proof of labor for work done in the assessment year 1979 for all 84 claims, recorded September 19, 1979, in Sandoval County, New Mexico, was filed with BLM February 4, 1980. A proof of labor for the 1980 assessment year, for all 84 claims, was filed with BLM August 29, 1980.

By decision of August 7, 1981, BLM declared all 84 claims abandoned and void because no evidence of assessment work for 1979 assessment year had been filed with BLM on or before December 30, 1979, as required by 43 CFR 3833.2-1. 1/

Webster has appealed, stating that he had not been given any notification that his assessment work evidence would have to be filed with BLM at the time he filed the copies of his notices of location in 1979. He asserts he has maintained all his claims in accordance with the mining law under which they were located, and he resents that BLM did not notify him timely of the requirement for recordation of the proofs of labor with BLM.

[1] Section 314, FLPMA, supra, requires the owner of an unpatented lode mining claim located prior to October 21, 1976, to file in the proper BLM office a copy of the official record of the notice of location of the mining claim and an affidavit of assessment work performed on the unpatented mining claim or a notice of intention to hold the claim, within the 3-year period following October 21, 1976, and prior to December 31 of each year thereafter, a copy of the current proof of labor. The section also provides that failure to file such instruments, i.e., notice of location and affidavit of assessment work or notice of intention to hold the claim, within the prescribed time periods conclusively constitutes an abandonment of the mining claim by the owner. Corresponding Departmental regulations, 43 CFR 3833.1, 3833.3, and 3833.4, replicate the statutory requirements and consequences.

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1/ The BLM decision should have recited Oct. 22, 1979, instead of Dec. 30, 1979, as the crucial date for filing the initial proof of labor for claims located prior to the enactment of FLPMA.

Inasmuch as no instruments relating to the assessment work performed on or for the Sure group or the Jeannie group of unpatented mining claims were timely tendered to BLM for recordation, BLM properly declared these claims abandoned and void. This Board has no authority to excuse a late filing of an instrument required by FLPMA, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The fact that appellant may not have been aware of the recordation requirements of FLPMA, nor of the proper procedure for such recordation, while unfortunate, does not excuse him from compliance. Those who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). Although it is to be regretted that BLM did not advise appellant of the need to file evidence of assessment work when it received the copies of the notices of location, the authority of the United States to enforce a public land statute is not vitiated or lost by negligence of its employees to inform an affected member of the public of his responsibilities under the statute. See 43 CFR 1810.3. The responsibility for complying with the recordation requirements of FLPMA rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, *supra*.

[3] Accomplishment of a proper recording in the appropriate county does not relieve a mining claimant from recording with BLM under the filing requirements of FLPMA or the implementing regulations. While under 43 CFR 3833.4(b), a defective or untimely recording under state law does not, of itself, constitute a failure to file under FLPMA, neither does a valid or timely filing with a county constitute a FLPMA filing. These are two separate filing requirements, and compliance with one does not constitute compliance with the other.

Appellant may wish to consult with BLM about the possibility of relocating his claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge

